

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, Foley Square, in the City of New York, on the 1st day of August, two thousand and six.

PRESENT:

HON. RALPH K. WINTER,
HON. BARRINGTON D. PARKER,
HON. REENA RAGGI,
Circuit Judges.

Qin Di Chen, Lan Zhen Dong, _____
_____*Petitioners,*

-v.-

No. 05-5344-ag
NAC

Bureau of Citizenship and Immigration Services,
Respondent.

FOR PETITIONER: Lorance Hockert, New York, New York.

FOR RESPONDENT: Thomas P. Colantuono, United States Attorney for the District of
New Hampshire, Peter E. Papps, Assistant United States Attorney,
Concord, New Hampshire.

UPON DUE CONSIDERATION of this petition for review of a decision of the Board of
Immigration Appeals (“BIA”), it is hereby ORDERED, ADJUDGED, AND DECREED that the
petition for review is DENIED.

Qin Di Chen and Lan Zhen Dong, through counsel, petition for review of the BIA’s

1 decision affirming Immigration Judge (“IJ”) Gabriel Videla’s denial of their applications for
2 asylum, withholding of deportation, and relief under the Convention Against Torture (“CAT”).
3 We presume the parties’ familiarity with the underlying facts and procedural history of the case.

4 Where, as here, the BIA agrees with the IJ’s conclusion that a petitioner is not credible
5 and, without rejecting any of the IJ’s grounds for decision, emphasizes particular aspects of that
6 decision, this Court reviews both the BIA’s and IJ’s opinions -- or more precisely, the Court
7 reviews the IJ’s decision including the portions not explicitly discussed by the BIA. *Yun-Zui*
8 *Guan v. Gonzales*, 432 F.3d 391, 394 (2d Cir. 2005). This Court reviews the agency’s factual
9 findings, including adverse credibility determinations, under the substantial evidence standard,
10 treating them as “conclusive unless any reasonable adjudicator would be compelled to conclude
11 to the contrary.” 8 U.S.C. § 1252(b)(4)(B); *see, e.g., Zhou Yun Zhang v. INS*, 386 F.3d 66, 73 &
12 n.7 (2d Cir. 2004). Nevertheless, “the fact that the [agency] has relied primarily on credibility
13 grounds in dismissing an asylum application cannot insulate the decision from review.”
14 *Ramsameachire v. Ashcroft*, 357 F.3d 169, 178 (2d Cir. 2004). An adverse credibility
15 determination must be based on “specific, cogent reasons” that “bear a legitimate nexus” to the
16 finding. *Secaida-Rosales v. INS*, 331 F.3d 297, 307 (2d Cir. 2003).

17 As a preliminary matter, Chen argues that the agency should not have relied upon the
18 1995 testimony. Exhaustion of administrative remedies is statutorily required for aliens
19 challenging final orders of removal, 8 U.S.C. § 1252(d)(1), and requires exhaustion of bases for
20 relief and issues, although not subsidiary legal arguments. *See Gill v. INS*, 420 F.3d 82, 86 (2d
21 Cir. 2005). Because Chen failed to argue before the BIA the issue of the agency’s reliance on the
22 1995 testimony, this Court does not have jurisdiction to address it. *Id.*

23 The IJ found that the petitioners’ 1995 testimony that their house was destroyed and that
24 they were fined 10,000 RMB was inconsistent with their 2003 testimony that their house was not

1 destroyed and that they were not fined. We agree with the BIA's conclusion that petitioners'
2 testimony that they lied under the instruction of a travel agent or law firm was insufficient to
3 rehabilitate their credibility. Nothing in their testimony indicated that they were unwilling
4 participants in their perjury at the time of the 1995 hearing, and the IJ did not need to credit or
5 rely on their explanation that they were told to perjure themselves as a means of resolving the
6 inconsistency. *See Majidi v. Gonzales*, 430 F.3d 77, 80-81 (2d Cir. 2005). Where the testimony
7 is so dramatically different as to whether or not basic instances of harm occurred, such as a
8 substantial fine and the demolition of a house, this inconsistency may alone constitute substantial
9 evidence, sufficient to support the adverse credibility determination. *Id.*

10 For this reason, we can confidently predict that the IJ would reach the same decision
11 absent any errors that were made. *See Xiao Ji Chen v. U.S. Dep't of Justice*, 434 F.3d 144, 162
12 (2d Cir. 2006). Therefore, the petition for review of the asylum claim is denied. Because the
13 petitioners failed to argue their claims for withholding of deportation and CAT relief before the
14 BIA, they have failed to exhaust their administrative remedies and this Court does not have
15 jurisdiction to address those claims. *See Gill*, 420 F.3d at 86.

16 For the foregoing reasons, the petition for review is DENIED. Having completed our
17 review, any stay of removal that the Court previously granted in this petition is VACATED, and
18 any pending motion for a stay of removal in this petition is DENIED as moot. Any pending
19 request for oral argument in this petition is DENIED in accordance with Federal Rule of
20 Appellate Procedure 34(a)(2), and Second Circuit Local Rule 34(d)(1).

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23 FOR THE COURT:
24 Roseann B. MacKechnie, Clerk

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26 By: _____
27 Oliva M. George, Deputy Clerk